BETTY C. CRAMER
ARTHUR E. ROSE

IBLA 79-491
79-493 Decided July 22, 1980

Appeals from decisions of the New Mexico State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offers NM 36408, NM 36600.

Set aside and remanded.

1. Oil and Gas Leases: Applications: Generally

   Use of a common address is not grounds for rejection of a successful simultaneous oil and gas lease offer.

2. Oil and Gas Leases: Applications: Generally

   Where an oil and gas lease offer which prima facie met the requirements of the regulations is rejected by the Bureau of Land Management because the offeror did not satisfactorily complete an inquiry sent to the offeror and on appeal the information is submitted together with an explanation, the offer need not be rejected.

APPEARANCES: Earl H. Johnson, Esq., Denver, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Betty C. Cramer appeals from a May 31, 1979, decision of the New Mexico State Office, Bureau of Land Management (BLM), which rejected her oil and gas lease offer for noncompliance with a request by BLM for additional information. Her offer, drawn with first priority for parcel No. 654 in the April 1979 drawing for noncompetitive simultaneous oil and gas leases, was designated NM 36600.

Arthur E. Rose appeals from a June 4, 1979, decision of the same office which rejected for the same reason his winning offer,

designated NM 36408, for parcel No. 579 in the March 13, 1979, drawing. This decision added that R. K. Cramer paid rental for this lease and infers from the use of a return address also used by other offerors in this drawing that appellant Rose used a filing service. Because the same decision and the same issues are involved in these two cases, they are consolidated for consideration on appeal.

Each BLM request had asked the offeror to forward both (1) a statement, personally signed by the offeror, on the form provided, "stating all circumstances under which [the] offer was formulated," and (2) a copy of any contract or agreement between the applicant and any filing service used. Both appellants timely returned the form, but neither responded to the request for a copy of any contract or agreement. Appellant Cramer completed the form as follows:

1. The address or post office box on the offer to lease NM 36600 is my residence or mailing address. If not, state the name of the individual, association or corporation whose address appears on the entry card. — X Yes / _ No

2. I selected the parcel within the offer. If not, state the facts under which the offer was formulated and by whom. (What is the relationship between the offeror and the person who selected the parcel?) Actual facts are required. — X Yes / _ No

   I have been an active participant in the Oil & Gas lease program for many years.

3. Was the entry card signed before or after the offer was formulated, and by whom? — _ Before / X After

4. Was the entry card dated before or after the offer was formulated, and by whom? — _ Before / X After

/s/ Betty C. Cramer
Signature of Offeror

Appellant Rose's completed form differed only in that he identified himself in response to question No. 3, signed the card and made no comment after checking his answer to question No. 2.

Both appellants argue on appeal that the form BLM supplied was poorly drafted and confusing, particularly due to an accompanying

instruction that the form be completed "without alteration." Both assumed that the request for a specific answer to question No. 2 seemed irrelevant to their situations, so did the subsequent "by whom" queries. Appellants insist that they answered in good faith, but that they did not understand the nature of BLM's inquiry. They object to BLM inquiries in response to the use of a common address and emphasize that such use is valid. Both appellants attached affidavits on appeal to establish that no others had any interest in their offers. They explain that because there was no contract, they could not submit one. They ask for a second chance to comply with BLM's request for additional information, as in Lee S. Bielski, 39 IBLA 211, 86 I.D. 80 (1979).

[1] As the appellants correctly contend, the mere use of a common address is not grounds for rejection of a lease offer. Virginia L. Jones, 34 IBLA 188 (1978). However, the BLM State Office has authority to require a successful offeror to submit additional information deemed necessary to determine the offeror's qualifications, even though the offer on its face complied with the applicable regulations. Charlotte L. Thornton, 31 IBLA 3 (1977). Similarly, BLM may properly inquire into the relationship between an offeror and a filing service to determine if the regulation requirements have been met. D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977). Such requests are to acquire information not reflected on the face of the card. A request for relevant information is a proper exercise of the discretionary authority of this Department.

[2] Where an offeror fails to respond to such an inquiry within a prescribed period of time, inferences may be drawn from that failure to comply which might be sufficient to indicate a violation of the regulation where no information is ever submitted. In such a case, rejection of the offer would be appropriate. Ricky L. Gifford, 34 IBLA 160, 163 (1978); Lee S. Bielski, supra. This is not the case here. Appellants responded. On appeal they fully explained they did not submit copies of any preexisting agreements because there were none. They also explain their misunderstanding of the form. Appellants claim they were confused by it. Ricky L. Gifford, supra, is one example of an appellant given additional time to submit supplementary information (there a brochure) to BLM. Similarly, in Olin Corp., 39 IBLA 161 (1979), a sodium lessee was given the opportunity to clarify unsatisfactory responses to a BLM inquiry.

There is no reason to reject the offers for violating any regulation at this time. They met the requirements when they were filed. Rejection of the offers under these circumstances would be arbitrary. Cf. Brick v. Andrus, Civ. No. 79-1766 (D.C. Cir. June 6, 1980).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the BLM

decisions are set aside and the cases are remanded for further adjudication of the offers and issuance of leases, if all else be regular.

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Joan B. Thompson
Administrative Judge

I concur:

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Joseph W. Goss
Administrative Judge

ADMINISTRATIVE JUDGE STUEBING DISSENTING:

As a result of appellants each having an address common with other applicants, BLM required that they submit within 30 days additional information concerning the common address, including a personally signed statement describing the circumstances of filing, and a "certified" copy of the contract or agreement between each offeror and the individual, association, or corporation under which such filing services are authorized to be performed on behalf of the applicant. 1/ The decisions included a statement emphasizing that BLM must have a specific answer to this latter item. Appellants each timely submitted an incomplete reply. Cramer's response failed to show who signed and dated the entry card and omitted any reference to the contract request. Rose's response did not answer the question concerning who dated the card and failed even to mention the request for a copy of the contract. For these omissions appellants' offers were rejected.

Appellants argue that the printed BLM form provided them for making their statement, on which the questions were printed and space provided for answers, was "inadequately drafted," and suffered from "inherent inarticulate confusion" compounded by the accompanying instruction that the form must be used "without alteration" for making their responses.

Questions 3 and 4 were inadequately answered by Cramer in that she did not indicate, respectively, "by whom" the entry card was signed and dated. Moreover, BLM's decision of April 27, 1979, which required the submission of this statement, also required her to provide the following: "2. A certified copy of the contract or agreement between applicant and the individual, association or corporation under which such filing services are authorized to be performed on behalf of the applicant. We must have a specific answer to this item."

Appellants' replies to BLM simply ignored this requirement, making no reference to it whatever. On appeal each appellant has submitted his/her affidavit attesting that each did not submit a copy of a contract or agreement between himself or herself and a leasing service because neither was a party to any such agreement, and each has now stated added that he/she had formulated, executed and filed the offer alone. Although this was precisely the information BLM was attempting to elicit, appellants say they did not enlighten BLM to this effect

1/ We have held in a number of recent decisions that it is improper for BLM to require that copies of such contracts be "certified." However, the result in this case is not affected thereby.

because of BLM's instruction that the form must be completed "without alteration." Apparently Cramer would have us understand that she believed that this admonition meant that she could not write anything in the white space provided beneath each question on the form. However, this contention is belied by the fact that she was not thereby inhibited from utilizing the space beneath question 2 to write that she has "been an active participant in the Oil & Gas lease program for many years" – something of a non-sequitur. Nor does she explain why, if she believed she was prohibited from writing on the form, she did not provide the information on a separate sheet of paper.

The response of appellant Rose was inadequate for the reasons already stated.

The majority seems to conclude that because both appellants have advanced the same arguments on appeal, i.e., that the form was poorly drafted, that they were confused, and that they were "misled" by the instruction that the form was to be completed "without alteration," etc., that these allegations must be so. However, the majority ignores the fact that each of these appellants is represented by the same attorney, who prepared and submitted the pleadings individually on their respective behalf. Of course they are in agreement. As this form is in regular use by the New Mexico State Office where the oil and gas leasing program is extremely active, we can presume that the form has had extensive use. Were we to encounter a great number of appeals by persons separately and independently making these same assertions, it would require that we give them certain credence. But insofar as I am aware, these are the only two individuals who have appealed on this basis. To accept their allegations because one says the same as the other when both are represented by the same advocate is virtually the literal definition of "bootstrapping."

In any event these inadequate and nonresponsive replies left BLM in ignorance and doubt about the true circumstances surrounding the filing of the drawing entry card, and therefore unable to conclude that either lease offer was qualified. Where an oil and gas lease offeror fails to respond within the prescribed period of time to an order directing him to submit specific information necessary to determine whether his offer is valid, it is appropriate to reject the offer. Lee S. Bielski, 39 IBLA 211, 86 I.D. 80 (1979); W. H. Gilmore, 41 IBLA 25, 31 (1979). The State Office had full authority to require the offerors to submit the additional information if deemed necessary to determine the offeror's qualifications. Lee S. Bielski, supra; Evelyn Chambers, 31 IBLA 381 (1979); Ricky L. Gifford, 34 IBLA 160 (1978); D. E. Pack, 30 IBLA 166 (1977).

Under the circumstances, I think BLM properly rejected both offers.

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Edward W. Stuebing
Administrative Judge